IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
ORDER

S.B.Civil Writ Petition No. 7050/2007
(Smt. Rajeshwari @ Rajesh Kumar Vs. District Judge Bikaner & Ors.)

Date of Order:-30.10.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.D.D.Chitlangi, for the petitioner.

BY THE COURT:-

This writ petition is directed against order dated 04.06.2005, passed by the learned District Judge, Bikaner, in Appeal (Order) No. 155/2002, whereby the appeal preferred by the petitioner against an order dated 16.11.2002 passed by the Civil Judge (Junior Division), Bikaner, on an application preferred by the petitioner under Section 151 C.P.C. has been rejected.

The brief facts necessary for adjudication of the controversy involved are that one Shri Makhan lal preferred a suit for eviction against Shri Narayan Das. The suit was dismissed by the trial court on 09.12.1998. Aggrieved by the judgment and decree dated 09.12.1998 passed by the trial court,the plaintiff Makhan Lal preferred an appeal before the learned District Judge, Bikaner, which was later transferred to Additional District Judge No. 1 , Bikaner. The said appeal was

dismissed as not pressed on 24.11.2001.

The petitioner Smt. Rajeshwari preferred an application for withdrawal of the amount of rent deposited by the tenant Shri Narayan Das during the pendency of the suit before the learned trial court and thereafter, under Section 19 A of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (in short "the Act of 1950", hereinafter). It was contended on behalf of Shri Makhan lal before the learned trial court that Smt. Rajeshwari is neither landlord nor was party to the proceedings before the learned trial court, therefore, she is not entitled to claim the rent deposited by the tenant during the pendency of the suit and thereafter under Section 19 A of the Act of 1950. The learned trial court observed that while determining the provisional rent it was specifically ordered that the plaintiff may withdraw the deposited rent, if so desired. Further, Smt. Rajeshwari was not party to the suit or application under Section 19 A of the Act of 1950, therefore, she is not entitle to claim the rent deposited by the tenant during the proceedings before the trial court. Accordingly, the learned trial court rejected the application preferred by Smt. Rajeshwari petitioner herein.

In the appeal preferred by the petitioner herein before the learned District Judge inter alia it was contended that the suit premises was mortgaged by Smt. Rajeshwari with the non-applicant Shri Makhan lal but he by committing fraud got the

sale-deed executed and therefore, a suit preferred by Smt. Rajeshwari is pending before the court of competent jurisdiction. It was further stated that a suit have already been preferred by Smt. Rajeshwari petitioner herein against the tenant Shri Narayan Dutt. In this view of matter the learned trial court should have passed an order permitting the petitioner to withdraw of the rent deposited. The contentions raised by the petitioner did not find favour with the learned District Judge and accordingly the appeal preferred by the petitioner has been rejected vide order dated 04.06.2005, hence this writ petition.

It is not in dispute that the petitioner was not a party to the suit preferred by the plaintiff Shri Makhan lal against the defendant Shri Narayan Das. The determination of provisional rent was made by the learned trial court vide order dated 09.08.1994 and it was specifically ordered that the plaintiff may withdraw the rent, if so desired. Similar order for the withdrawal of the rent was passed on the application preferred by the defendant Shri Narayan Das for depositing the rent u/s 19-A of the Act of 1950. In the said proceedings also the petitioner herein was not a party respondent.

As per the provision of Section 13 (4) of the Act of 1950 the tenant is required to deposit in court or pay to the landlord the amount determined by the court under Section 13(3) within 15 days from the date of such determination or within such

further time, as may be extended by the court. It is further provided the tenant shall continue to deposit in court or pay to the landlord month by month the monthly rent to the period up to which the determination has been made. Thus, the from the provisions of Section 13 (4) it cannot be inferred that any person who is not party to the suit can claim the rent deposited claiming himself to be landlord. Moreover, specific order having been passed by the court competent jurisdiction as aforesaid, no one can claim the deposited amount by way of misc. Application, unless and until the judgment and decree passed by the court is assailed on available grounds and the same is set aside. That apart even according to the petitioner a sale deed already stands executed by her in favour of Shri Makhan lal and she has already filed a suit for cancellation of the sale deed on the ground that the same was executed by Shri Makhan lal by committing fraud. Therefore, the facts remains that as on the date the sale deed executed exists and it cannot be said that the Makhan Lal is not the owner of the property.

Moreover, so far as the provisions of Act of 1950 are concerned the relationship of landlord and tenant is only relevant for maintaining the suit for eviction or even for deposit of the rent under Section 19 A.

Section 3 (iii) of the Act of 1950 defines “landlord” means any person who for the time being is receiving or is entitle to

receive the land or any premises, whether on his own account or as an agent, trustee, guardian or receiver or any other person who would so receive or be entitle to receive the rent if the premises is let to a tenant; it includes a tenant in relation to sub-tenant.

Thus, from bare perusal of the definition it is manifestly clear that the term 'landlord' as used is not restricted to the owners of the premises. As per the aforesaid definition, the element of ownership of the suit premises is not the only or main characteristics of a landlord but, it is the receipt of the rent by the person, which is a relevant and important factor.Therefore, if the relationship of landlord and tenant between Shri Makhan Lal and Makhan Lal is established in terms of the provisions of the Act of 1950, the question with regard to ownership of the suit premises is not required to be gone into for the purpose of the lis between the parties. Therefore, the petitioner cannot claim the withdrawal of the rent on the basis of even alleged ownership of the premises, which as a matter of fact is a subject matter of litigation between the parties.

Thus, viewed from any angle the petitioner has no right to claim withdrawal of the rent deposited by the tenant during the pendency of the suit or thereafter under Section 19 A of the Act of 1950. The order passed by the learned trial court affirmed by the appellate court does not suffer from any infirmity or

illegality.

Accordingly, the writ petition is dismissed with no order as to costs.

(SANGEET LODHA),J.